
ENGROSSED SUBSTITUTE HOUSE BILL 2191

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lantz, Warnick, Pedersen, Williams, Moeller, Seaquist, Morrell, Kelley, Simpson and Ormsby)

READ FIRST TIME 2/28/07.

1 AN ACT Relating to limiting deferred prosecution in domestic
2 violence cases; amending RCW 10.05.010, 10.05.020, and 10.05.030; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 10.05.010 and 2002 c 219 s 6 are each amended to read
6 as follows:

7 (1) In a court of limited jurisdiction a person charged with a
8 misdemeanor or gross misdemeanor may petition the court to be
9 considered for a deferred prosecution program. The petition shall be
10 filed with the court at least seven days before the date set for trial
11 but, upon a written motion and affidavit establishing good cause for
12 the delay and failure to comply with this section, the court may waive
13 this requirement subject to the defendant's reimbursement to the court
14 of the witness fees and expenses due for subpoenaed witnesses who have
15 appeared on the date set for trial.

16 (2) A person charged with a traffic infraction, misdemeanor, or
17 gross misdemeanor under Title 46 RCW shall not be eligible for a
18 deferred prosecution program unless the court makes specific findings
19 pursuant to RCW 10.05.020. Such person shall not be eligible for a

1 deferred prosecution program more than once. Separate offenses
2 committed more than seven days apart may not be consolidated in a
3 single program.

4 (3) A person charged with a misdemeanor or a gross misdemeanor that
5 would be considered domestic violence under RCW 10.99.020 or with a
6 misdemeanor or gross misdemeanor under chapter 9A.42 RCW shall not be
7 eligible for a deferred prosecution program unless the court makes
8 specific findings pursuant to RCW 10.05.020. Such person shall not be
9 eligible for a deferred prosecution program more than once.

10 (4) This section is not intended to limit the prosecuting
11 attorney's ability to negotiate alternative dispositions.

12 **Sec. 2.** RCW 10.05.020 and 2002 c 219 s 7 are each amended to read
13 as follows:

14 (1) Except as provided in subsection (2) or (3) of this section,
15 the petitioner shall allege under oath in the petition that the
16 wrongful conduct charged is the result of or caused by alcoholism, drug
17 addiction, or mental problems for which the person is in need of
18 treatment and unless treated the probability of future recurrence is
19 great, along with a statement that the person agrees to pay the cost of
20 a diagnosis and treatment of the alleged problem or problems if
21 financially able to do so. The petition shall also contain a case
22 history and written assessment prepared by an approved alcoholism
23 treatment program as designated in chapter 70.96A RCW if the petition
24 alleges alcoholism, an approved drug program as designated in chapter
25 71.24 RCW if the petition alleges drug addiction, or by an approved
26 mental health center if the petition alleges a mental problem.

27 (2) In the case of a petitioner charged with a misdemeanor or gross
28 misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under
29 oath in the petition that the petitioner is the natural or adoptive
30 parent of the alleged victim; that the wrongful conduct charged is the
31 result of parenting problems for which the petitioner is in need of
32 services; that the petitioner is in need of child welfare services
33 under chapter 74.13 RCW to improve his or her parenting skills in order
34 to better provide his or her child or children with the basic
35 necessities of life; that the petitioner wants to correct his or her
36 conduct to reduce the likelihood of harm to his or her minor children;
37 that in the absence of child welfare services the petitioner may be

1 unable to reduce the likelihood of harm to his or her minor children;
2 and that the petitioner has cooperated with the department of social
3 and health services to develop a plan to receive appropriate child
4 welfare services; along with a statement that the person agrees to pay
5 the cost of the services if he or she is financially able to do so.
6 The petition shall also contain a case history and a written service
7 plan from the department of social and health services.

8 (3)(a) In the case of a petitioner charged with a misdemeanor or
9 gross misdemeanor that would be considered domestic violence under RCW
10 10.99.020, the petitioner shall allege under oath in the petition that
11 the petitioner is the family or household member of the alleged victim;
12 that the petitioner is in need of domestic violence perpetrator
13 treatment under RCW 26.50.150; that the petitioner wants to correct his
14 or her conduct to reduce the likelihood of harm to his or her family or
15 household members; and that unless treated, the probability of future
16 recurrence is great. The petition shall contain a statement that the
17 petitioner agrees to pay the cost of diagnosis and treatment if the
18 petitioner is financially able. The petition shall also contain a case
19 history and written assessment prepared by an approved domestic
20 violence perpetrator treatment program provider under chapter 26.50
21 RCW.

22 (b) In lieu of alleging that the petitioner is in need of domestic
23 violence perpetrator treatment under RCW 26.50.150, the petitioner
24 shall allege that the petitioner is in need of counseling or other
25 appropriate services if:

26 (i) The case history and written assessment indicate that the
27 petitioner is not the primary perpetrator of domestic violence in the
28 relationship based on the comparative extent of injuries inflicted or
29 threats creating fear of physical injury or the history of domestic
30 violence between the persons involved; or

31 (ii) The victim is a family or household member who is not a
32 spouse, former spouse, person who has a child in common with the
33 petitioner whether or not he or she has been married or lived together
34 with the petitioner, person sixteen years of age or older who is
35 presently residing together or who has resided together with the
36 petitioner in the past and who has or has had a dating relationship
37 with the petitioner, or person sixteen years of age or older who has or
38 has had a dating relationship with the petitioner.

1 (4) Before entry of an order deferring prosecution, a petitioner
2 shall be advised of his or her rights as an accused and execute, as a
3 condition of receiving treatment, a statement that contains: (a) An
4 acknowledgment of his or her rights; (b) an acknowledgment and waiver
5 of the right to testify, the right to a speedy trial, the right to call
6 witnesses to testify, the right to present evidence in his or her
7 defense, and the right to a jury trial; (c) a stipulation to the
8 admissibility and sufficiency of the facts contained in the written
9 police report; and (d) an acknowledgment that the statement will be
10 entered and used to support a finding of guilty if the court finds
11 cause to revoke the order granting deferred prosecution. The
12 petitioner shall also be advised that he or she may, if he or she
13 proceeds to trial and is found guilty, be allowed to seek suspension of
14 some or all of the fines and incarceration that may be ordered upon the
15 condition that he or she seek treatment and, further, that he or she
16 may seek treatment from public and private agencies at any time without
17 regard to whether or not he or she is found guilty of the offense
18 charged. He or she shall also be advised that the court will not
19 accept a petition for deferred prosecution from a person who sincerely
20 believes that he or she is innocent of the charges or sincerely
21 believes that he or she does not, in fact, suffer from alcoholism, drug
22 addiction, or mental problems, or is in need of domestic violence
23 perpetrator treatment, or counseling or other services, or in the case
24 of a petitioner charged under chapter 9A.42 RCW, sincerely believes
25 that he or she does not need child welfare services.

26 (~~(4)~~) (5) Before entering an order deferring prosecution, the
27 court shall make specific findings that: (a) The petitioner has
28 stipulated to the admissibility and sufficiency of the facts as
29 contained in the written police report; (b) the petitioner has
30 acknowledged the admissibility of the stipulated facts in any criminal
31 hearing on the underlying offense or offenses held subsequent to
32 revocation of the order granting deferred prosecution; (c) the
33 petitioner has acknowledged and waived the right to testify, the right
34 to a speedy trial, the right to call witnesses to testify, the right to
35 present evidence in his or her defense, and the right to a jury trial;
36 and (d) the petitioner's statements were made knowingly and
37 voluntarily. Such findings shall be included in the order granting
38 deferred prosecution.

1 **Sec. 3.** RCW 10.05.030 and 2002 c 219 s 8 are each amended to read
2 as follows:

3 The arraigning judge upon consideration of the petition and with
4 the concurrence of the prosecuting attorney may continue the
5 arraignment and refer such person for a diagnostic investigation and
6 evaluation to an approved alcoholism treatment program as designated in
7 chapter 70.96A RCW, if the petition alleges an alcohol problem, an
8 approved drug treatment center as designated in chapter 71.24 RCW, if
9 the petition alleges a drug problem, to an approved mental health
10 center, if the petition alleges a mental problem, (~~or~~) the department
11 of social and health services if the petition is brought under RCW
12 10.05.020(2), or to an approved domestic violence perpetrator treatment
13 program provider under chapter 26.50 RCW, or counseling or other
14 services, if the petition alleges problems with domestic violence.

--- END ---